

**SPECIAL MEETING OF THE COMMON COUNCIL
OF THE CITY OF EL MIRAGE
EL MIRAGE CITY COUNCIL CHAMBERS
14010 N. EL MIRAGE ROAD
4:00 PM – WEDNESDAY JULY 6, 2016**

Members of the El Mirage City Council will attend either in person or by telephone conference call. Please silence all electronic communication devices (including cell phones and pagers) before the meeting is called to order. Thank you.

Note: The Common Council of the City of El Mirage, by a duly passed motion, may vote in public session to adjourn to executive session on any agenda item in conformation with A.R.S. Section 38.431.03 including legal advice from the City Attorney.

Agenda

I. ROLL CALL

Mayor Lana Mook
Councilmember Roy Delgado
Councilmember Jack Palladino
Councilmember David Shapera

Vice Mayor Joe Ramirez
Councilmember Bob Jones
Councilmember Lynn Selby

II. CALL TO ORDER

Pledge of Allegiance
Moment of Silence
Silence Cell Phones & Pagers

III. SPECIAL AGENDA

- A.** Consideration and action to adopt the Arbitrator's June 20, 2016 recommendation in the matter of arbitration on wages (only) between the El Mirage Police Employee's Association (EMPEA) and the City of El Mirage. (Administration)

IV. ADJOURNMENT

Accommodations for Individuals with Disabilities - Alternative format materials, sign language interpretation, assistive listening devices or interpretation in languages other than English are available upon 72 hours advance notice through the Office of the City Clerk, 12145 NW Grand Avenue, El Mirage, Arizona, (623) 876-2943, TDD (623)933-3258, or FAX (623) 876-4603. To the extent possible, additional reasonable accommodations will be made available within the time constraints of the request.

AFFIDAVIT OF POSTING – SPECIAL CITY COUNCIL MEETING OF JULY 6, 2016

I hereby certify that this agenda was posted by 5:00 p.m. on July 1, 2016 at the following locations:
1) the City of El Mirage Exterior Bulletin Board at 12145 N.W. Grand Avenue, and 2) the City of El Mirage website at www.cityofelmirage.org.


Sharon Antes, City Clerk

REQUEST FOR COUNCIL ACTION

DATE SUBMITTED: <u>06/30/2016</u>	TYPE OF ACTION: ___ RESOLUTION # _____ ___ ORDINANCE # _____ <input checked="" type="checkbox"/> OTHER: _____	SUBJECT: Consideration and action to adopt the Arbitrator's June 20, 2016 recommendation in the matter of arbitration on wages (only) between the El Mirage Police Employee's Association (EMPEA) and the City of El Mirage.
DATE ACTION REQUESTED: <u>07/06/2016</u>		
<input checked="" type="checkbox"/> REGULAR ___ CONSENT		

TO: Mayor and Council
FROM: Dr. Spencer A. Isom, City Manager
RECOMMENDATION: Adopt the Arbitrator's June 20, 2016 recommendation in the matter of arbitration on wages (only) between the El Mirage Police Employee's Association (EMPEA) and the City of El Mirage, and to affirm the Memorandum of Understanding (MOU) Addendum dated April 21, 2014.
PROPOSED MOTION: I move to adopt the Arbitrator's recommendation dated June 20, 2016 as presented, affirming the MOU Addendum dated April 21, 2014.
ATTACHMENTS: Arbitrator's June 20, 2016 Recommendation; Meet and Confer Ordinance 30.07; April 21, 2014 MOU Addendum between EMPEA and the City of El Mirage dated April 21, 2014.

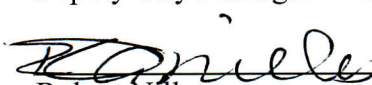
DISCUSSION: Pursuant to the Meet and Confer Ordinance, Section 30.07(C)(6), which states in pertinent part, ".....all areas of agreement, as well as those areas in dispute and still under consideration, and the recommendation of the arbitrator, shall be submitted to Mayor and Council for their consideration. The Mayor and Council may also take whatever actions they feel appropriate with regard to those areas in dispute. Final action by the Mayor and Council shall constitute the memorandum of understanding for the following fiscal year." The arbitrator's recommendation affirms the wages agreed to in the 3rd year (FY17) of the April 21, 2014 MOU Addendum between EMPEA and the City of El Mirage in accordance with Section 1, Article 3 – Wages, Paragraph 2.

FINANCIAL IMPACT: The cost to implement the arbitrator's recommendation is included in the FY17 budget. The estimated cost to Council contingency for the arbitration is roughly \$10,000.

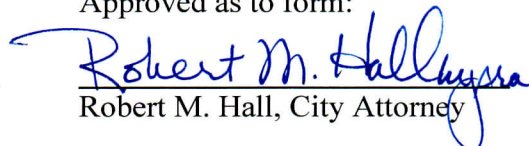
DEPARTMENT LINE ITEM ACCOUNT: N/A

BALANCE IN LINE ITEM IF APPROVED: N/A

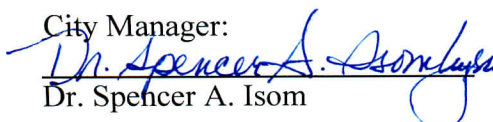
Deputy City Manager/Finance Director:


7/1/16
 Robert Nilles Date

Approved as to form:


7/1/16
 Robert M. Hall, City Attorney Date

City Manager:


7/1/16
 Dr. Spencer A. Isom Date

In the Matter of Arbitration

Between

El Mirage Police Employees Association

and

City of El Mirage, Arizona

Opinion and Recommendation

Richard Fincher, Arbitrator

American Arbitration Association

Case Number: 01-16-0001-2426

Interest Arbitration

Dated June 20, 2016

Jurisdiction and Appearances

This interest arbitration is in accordance with provisions of the MOU between the EMPEA and the City of El Mirage, Arizona. The parties did not submit pre-hearing statements. The matter was heard on May 27, 2016. The parties stipulated the Arbitrator had jurisdiction to hear the matter. The parties stipulated the Arbitrator notes are the official record. Oral post-hearing statements closed the hearing.

The Association was represented by Doug Jones, President of EMPEA

The City was represented by Ryan Sarni, Mountain States Employers Council

Issue Presented

What shall be the appropriate wage percentage in the third year of the MOU Agreement??

Witnesses

1. Doug Jones, President of EMPEA
2. Dr. Isom, City Manager
3. Robert Nilles, Finance Director

Background

This case arises from an impasse in negotiations between the Police Association and the City. The parties declined the option of baseball arbitration (selecting one or the other offer), and agreed to allow the Arbitrator to recommend a number constituting the City's offer, the Association's offer, or a number in between those offers. As the moving party, the Association bears the burden of proof and must persuade the Arbitrator that their last offer is the proper amount of a wage increase.

City Ordinance provides "All issues not previously agreed to will be submitted to the arbitrator for resolution. ...the recommendation of the arbitrator shall be submitted to Mayor and Council for their consideration."

Relevant arbitral standards

The parties agreed to the following criteria to be applied by the Arbitrator (not prioritized or weighted).

- Comparability (wage rates of comparable employers in the relevant community)
- Structural issues with the current compensation model (generally ability to recruit and turnover of employment)
- Ability of employer to pay

The parties directed the Arbitrator to not employ other criteria, such as cost of living increases or differences in employee benefits between comparable cities.

Association last offer

The third year demand, in relevant part,

- Association members who have been employed for at least one year, and have not reached the top step, and are currently on the old step program, shall be moved to the corresponding numerical step of the new step plan
- Association members who have been employed for at least one year, and have not reached the top step and are currently on the new step program, shall receive a step increase as previously defined by MOU addendum attachments
- Association members who have been employed for five years, shall receive an additional step increase as previously defined by MOU addendum attachments...

City offer designated in the MOU, subject to reopener

- Third year-3.33% lump sum payment of their annualized regular rate of pay

Summary of the Facts

In the past, the City did not have a police department, instead relying on the County Sheriff. Since the conversion in 2007, the department has been building its capability in law enforcement. The City provides for “meet and confer” negotiations in Ordinance section 30.07. The Association represents sworn officers and Sergeants within the police workforce. There are 40 officers in the unit.

In 2014, the existing MOU was extended by signed addendum. Because of a dispute, the addendum provides for an old and new step chart for officers, and an old and new step chart for sergeants. The granting of steps is not guaranteed in the MOU. Testimony revealed that steps have not been consistently granted over time.

The current MOU provides that the Association is eligible for a 3.33% lump sum payment in the third year. However, the MOU also allows the Association the option to seek a third year reopener “limited to the topic of base wages.” On December 1, 2015, the Association notified the City Council of their intent to enter negotiations for the wage reopener, and later submitted an offer of settlement. Mediation was not successful.

Wage changes in the current MOU addendum

The current MOU is for three years. In the first year of the MOU, the Association received a 5% base wage adjustment. In the second year of the MOU, the Association received a 3.33% lump-sum payment. In the third year of the MOU, the MOU provides for a 3.33% lump-sum payment, and other benefit increases that are not in dispute.

As bargaining history, a City witness testified that (during prior negotiations), the City agreed to an Association proposal to swap the effective dates of the base wage increase and the lump sum payment, thereby giving the Association more income in the earlier year.

Cost of Association’s last offer for the third year reopener

The Association has proposed a three part offer of settlement. First, all sworn officers move to the new step plan. Second, all officers placed in the new step plan receive a step increase, which is a 5% increment. Third, all officer over five years of service in the new step plan receive a second step increase, which is another 5% increase. The City estimates the first year cost to be \$99,000. The Association estimates the first year cost to be \$108, 617. Either cost would be greater than the City offer for a 3.33% lump sum payment.

Over five years, the City estimates the cost of the Association’s offer (as compared to the lump sum payment) to be over one million dollars (\$1,000,000). This five-year estimate does not include potential (and expected) increases due to higher benefit costs, such as medical insurance and pensions.

Revenue growth and budgeted general fund compared to peer cities

There is no factual dispute over the revenue and available resources of the City. Finance Director Nilles testified the City has designated seven local cities as comparable. The population and budgeted general fund revenue varies considerably between the seven cities. The City of El Mirage has less sources of revenue, and a much smaller population, than other cities in the peer grouping. The City Manager testified “we are a small fish in a big pond.”

According to the data, the City has less general fund budgeted revenue than any of its peer group. According to the data, the City spends more its general fund revenue on city-wide “personnel costs” (including sworn officers) than any of its peer group. Three out of every four dollars is spent on personnel costs. According to the data, the City is ranked last in available revenue after city-wide “personnel costs” have been subtracted from the general fund.

According to the data, the City is first in the percentage of general fund revenue spent on “police personnel costs,” which includes sworn officers and other police staff. One out of every three available dollars is spent on personnel costs in the police department.

Cost reduction measures taken by City

The City Manager testified generally to cost reduction methods required to “right the ship” after the difficult times of the recession around 2008 and thereafter. The City declared a fiscal emergency in the 2010-2011 period. The City hired the current City Manager in 2011, and he has focused on financial stability. Finance Director Nilles testified the City conducted a layoff of 17 employees in 2010, and some departments still have fewer employees than in 2010. Finance Director Nilles testified the City budget is not currently balanced, and the City is currently looking to save \$100,000 in costs per year for five years.

Concerning revenue enhancers for the police department, the City now allocates profits from photo radar cameras to the police department. The City now earmarks some property tax revenue to public safety (fire and police).

Comparable employers for compensation

The City employs a compensation consultant (Gallagher and Company) to provide a wage update every two years. The study examines market competitiveness and market position at the 50% percentile of the market. The City has designated the following cities as “comparable” for the limited purpose of employee compensation:

- Avondale, Buckeye, Glendale
- Goodyear, Peoria. Surprise, Tolleson

The Association did not dispute the list of comparable employers.

The data revealed that the aggregate comparison of “sworn police officers” in El Mirage (at the 50% percentile) was 2% above the “market actual salaries” in the peer group. In contrast, the data revealed that the current range midpoints at the 50 % percentile of all “non-sworn” city positions combined are slightly misaligned compared to the median of the market, lagging by 11.5%. The data revealed that the range maximums of sworn police officers in El Mirage (at the 50% percentile) were highly competitive, leading by .4%. The data revealed that the range minimums of sworn police officers in El Mirage (at the 50% percentile) were slightly misaligned, lagging by 13.2%. The analysis recommended structural salary range changes in order to relieve the effect of compression of wages in the police and fire ranks.

The Association entered three comparability exhibits. The first exhibit shows per capita police wages, which purportedly reveals that El Mirage is last in actual wages paid to sworn officers. The Association entered a second comparability report which purportedly reveals that the actual wages paid to El Mirage sworn officers has shrunk over time, from \$3,017,547 in fiscal year 2013, to \$2,904,796 in fiscal year 2015. The charts imply that as retirements and turnover occur over time; the actual base wages of sworn officers paid by the City go down, giving the City a greater ability to pay. The City did not dispute this claim. The Association entered a third comparability report (for over the 25 year career of an officer) comparing the City of El Mirage with Peoria, again for Surprise, again for Glendale, and again for Buckeye. . The charts purportedly indicate that over a 25 year career, officers at El Mirage will be paid less than their counterparts. City witnesses strongly objected to the data source, calculations, and accuracy of these three exhibits.

Officer recruitment and turnover

The City presented data and testimony that recruiting police officers is not an obstacle due to officer compensation, and that exit interviews of officers in the past three years has not revealed a problem with officer compensation.

There is not a factual dispute concerning current turnover of officers. There is a dispute concerning future turnover of officers. The City presented a turnover report. The report included a chart for officers and sergeants, and a second chart for city-wide (civilian) employees, excluding sworn officers. The sworn officers had only one voluntary resignation in the past year, and testimony indicated that officer asked the Police Chief for reinstatement. For 15-16 YTD, voluntary turnover for officers was 2.5%. The chart of city-wide (civilian) employees revealed that turnover of voluntary resignation is far higher than for sworn officers.

For 15-16 YTD, voluntary turnover for civilians (non-officers) was 5.97 %. The City suggested the turnover rate for city employees (non-sworn officers) demonstrates a tangible need for the City to address wages in those job classifications.

Summary of Association Argument

The Association contends that their offer should be recommended because of three criteria: comparability, the City's ability to pay, and the structural defects implicated in the City's offer of a lump sum payment.

The City misstates the cost of the offer. The Association agrees the cost for one year would be around \$99,000, the estimate calculated by the City. However, the five year cost estimate is not relevant to this dispute.

The historical wage progression in the current MOU justifies a base wage increase in 2016. Only once in the current MOU as the City has given a base wage increase. That base wage increase was three years ago.

Over time, the actual base wages of the police officers has gone down. This is a highly relevant factor. Officers in the 8 to 10 year service range are the most underpaid. The Arbitrator should not give weight to an aggregate analysis.

The Association offer is modest. The Association's proposal would increase an officer's salary by a modest 6.6% annually.

The City can afford the last offer. The City argument is self-serving. The City did not deny they could fund the proposal, but merely protest that they have "other priorities." There are available funds.

The percentage of general fund revenue allocated to the police department is an improper criterion. El Mirage is land locked and does not have large generators of revenue. This percentage will never change over time.

The City's offer creates an unjustified structural defect in the compensation system for sworn officers, which will inevitably lead to greater turnover and an absence of stability in the force. In addition, the current wage model would prevent the City from effectively recruiting new police officers. The lump sum payment places the City at risk for losing progress made in building the department's capability.

The Gallagher Study admits there is a compression problem. Compression allows younger or newer officers to make more income (proportionality) than is fair when compared to the tenure of the more

senior officers. The City's offer does not decrease the structural compression that has been created over the years, by the City failing to grant a step increase every year.

Police officers constitute a unique and high-risk occupation, and thus justify a higher placement in the City compensation system. Police work has become a profession unlike any other. The City Manager is not treating police officers in an equitable manner.

In summary, the Association has proven its case. The modest economic package should be adopted. Sworn officers are underpaid in the city workforce. There is a serious compression problem. Officers with 8 to 12 years of service are the most underpaid. The Gallagher study reaches wrong conclusions in comparability. The Arbitrator should find in favor of the Association.

Summary of City Argument

The third-year wage proposal (3.33% lump sum) in the MOU is most consistent with the criteria. The one-time payment is already in the approved budget. The City contends the wage structure for city employees should be a consistent model, and rejects the Association's assertion that they are so different or unique compared with Fire officers.

Over the first year, the cost would be \$99,000. The Association does not disagree with the calculation. The Association's proposal would result in some officers receiving no (0 %) wage increase, with one officer receiving a 17% wage increase. This result would waste City resources.

Over five years, the cost of the Association's offer would be one million dollars (\$1,000,000). This five-year estimate does not include potential (and anticipated) increases due to higher benefit costs over time. The City has every right to embrace a five year financial outlook for wage increases. The City Manager testified to a five year planning model.

The historical wage progression in the current MOU does not justify a base wage increase. The Gallagher compensation study is persuasive. Officers are currently fairly paid compared to their peer group of surrounding cities. The City provided timely and accurate financial data concerning the wage comparison with other local employers.

The Arbitrator should reject the faulty math of the Association's many documents of comparability. In the hearing, the City inquired and then objected to admissibility of the calculations. Their logic resulted in false conclusions.

The Association's contention that there are structural defects in the current police wage model is not credible. There is no basis to accept that the police department is facing higher turnover or the inability to

recruit new officers in the future. Recent attrition has been minimal. Only one officer has resigned, and later sought reinstatement. This concern is mere speculation.

The City cannot afford the Association's last offer. The City provided timely and accurate financial data concerning its financial resources. According to the data of peer cities, the City is already first in the percentage of general fund revenue spent on police personnel costs, which includes sworn officers and other police staff. One out of every three available dollars is spent on personnel costs in the police department. The City has demonstrated other priorities for wage adjustments. The City Manager testified "we have no place to take it from."

In summary, the Association has failed to meet its burden of proof. Their last offer should be rejected by the Arbitrator. The actual wages and wage structure for officers is already more than competitive. Any base wage increase would place the City's financial recovery in jeopardy and would waste City resources.

Discussion

Theory of Interest Arbitration

Arbitration of interest disputes is viewed more as an instrument of collective bargaining, rather than as a process of adjudication. Arbitration of interest disputes significantly differs from arbitration of grievance disputes. In addressing grievance disputes, the Arbitrator determines existing contract rights while applying well-established standards. In contrast, interest arbitration determines an equitable answer to what the parties have not been able to resolve by themselves. The Arbitrator's role is to reach a solution that will be satisfactory enough for both sides to be workable. Interest arbitration in the Arizona public sector is not legislatively mandated; rather it is voluntarily consented to by the parties.

In some MOUs, the contract provides criteria to be observed by the Arbitrator. Here, no criteria exist in the MOU but three have been stipulated to by the parties. "Prevailing practice" refers to the arbitral standard of considering comparisons to other peer Agreements. The theory is that disputants would logically adopt the negotiated results of other similarly situated parties. Here, wage evidence from other local cities was entered into the record.

Arbitral research indicates the three most commonly weighted criteria are (1) wage and benefit comparisons with peer employers; (2) increases in the cost of living, and (3) the employer's "ability to pay." Where either of the first two factors is compelling (a problem), the arbitrator will generally not be dissuaded by claims of financial inability. Conversely, where the first two factors are not compelling, the arbitrator will focus less on the merits of "inability to pay."

Arbitral view of the employer's "ability to pay" a base wage increase

According to arbitral research, the issue of "ability to pay" is not commonly raised by disputants, because public employers recognize the difficulty of persuading arbitrators that they cannot pay more than they are offering. Paying more may require a reordering of budget priorities, new taxation, borrowing, reductions in force, or curtailment of services; but it can usually be done. If the employer chooses to maintain its budget, a wage increase would necessitate borrowing and perhaps tax increases. Arbitral awards distinguish between the employer's "inability to pay" versus their "unwillingness to pay."

Arbitral view of recruiting and retention

Arbitrators give significant weight to the employer's ability to attract and retain employees. If the employer has no difficulty in recruiting new employees, and if employee turnover is within or below normal bounds, then some wage comparability is presumed.

Merits

The parties agreed to the following criteria to be applied by the Arbitrator:

- Comparability
- Structural issues with the current compensation model
- Current ability of employer to pay

Wage rates of comparable employers (cities) in the relevant community

Arbitral decision-making places significant weight on comparability of wages. Here, the City employs a compensation consultant (Gallagher and Company) to provide a wage update every two years. The study examines market competitiveness and market position at the 50% percentile of the market. The City has selected seven surrounding employers as peers.

In rebuttal to the Gallagher study, the Association contends the data is misleading, in that it deals in the aggregate of wages, but does not emphasize that the actual wages of officers in the unit have decreased over the years. The Association presented three reports of alleged comparability. Each report indicated that officer compensation is less comparable to the peer group than the conclusions reached by the compensation study.

On this record, the Arbitrator finds the current wage structure for the sworn officer unit is comparable to the relevant local employers. The data places the City compensation model in a favorable light. Within their wage range, City officers are not underpaid. The maximum range is above the market of peer cities. No evidence of bargaining patterns within the seven peer cities were entered into evidence. For example, no evidence was presented indicating that the other peer cities were about to grant base wage increases of over 6% to sworn officers.

The Arbitrator does not find the Association's documents of comparability to be persuasive. For example, the Association assumed the comparators would give a step increase every year, which is uncommon. For example, the Association math failed to take into account the value of the lump-sum increases. For example, the Association used W-2 statements as source data, which do not distinguish among the various forms of compensation. Finally, the Association failed to provide the backup support for their calculations.

As the moving party, the Association did not establish its burden of proof concerning comparable employers. They did not present compelling data, witness testimony, or an expert witness arguing that sworn officers are systemically underpaid when compared to the seven relevant comparators.

Structural issues with compensation

Arbitral decision-making places significant weight on the employer's ability to recruit and retain new employees. Here, a City witness testified that there is no impediment to recruiting sworn officers. In addition, the City created an analysis of turnover of sworn officers versus non-sworn (civilian) officers. The turnover of sworn officers was minimal compared to civilians. No officers are quitting. There was no hard testimony suggesting that the data or testimony was incomplete, misleading or otherwise not credible. There is a dispute concerning future turnover of officers, but that concern is speculation and was not supported by testimony.

The Arbitrator is sympathetic to the issue of compression within the police force. In Arizona, most step models in the public sector are unsustainable due to limited revenue. I have no doubt compression exists and represents a source of angst from the more senior officers. The City admits there is some compression of wages between the newer versus more senior officers. However, this is not a relevant criteria to apply to this dispute. Every police (and fire) department in Arizona has some compression of actual wages. Importantly, the Association did not present evidence to suggest the other peer cities have negotiated solutions to wage compression for police officers. This issue should be left to negotiations.

On this record, I find there is no structural defect in the current compensation model for sworn officers. Speculation concerning future turnover is not evidence. As the moving party, the Association did not present compelling data, officer testimony, or an expert witness arguing contrary to the evidence.

Ability of employer to pay

As described above, there is substantial arbitral perspective on how to evaluate the "ability to pay" criteria. The Association argues the City has the "current ability to pay," and a wage increase would not result in serious budget problems. In contrast, the City argues it does not have the "current ability to pay,"

and a wage increase would place its current budget and financial plan at risk and force difficult choices. The City argues it has an obligation to set fiscal priorities consistent with direction from the City Council.

The City implemented several cost reduction steps in 2010, including reductions in force concerning 17 employees. Some departments still have lower headcount than before the recession. The City has apparently spread the effect of cost reduction efforts across the entire workforce.

Factually, the City did not testify they believe they have reached their limits of fiscal control principles and are precluded from additional spending or borrowing. Instead, the City asserts they do not prefer to alter budget priorities in ways deemed undesirable, or would result in their inability to fix other compensation problems within the non-sworn workforce. However, there is no budget surplus. The City budget is not balanced. The City credibly stated that they are actively seeking \$100,000 in savings each year for the next five years.

There is no evidence or suggestion that the City is about to receive an unexpected influx of revenue beyond current projections.

The City has consistently provided substantial funding to the police department. The police department has received newer vehicles and now has body cameras. The City has made a priority to invest in the police force. This dispute is not a case of cutbacks towards the department.

On this record, I find the City has the technical ability to pay more, but not the willingness to pay more. The City is past its fiscal emergency. This year, the City appears to have legitimate priorities in spending limited revenue with other employee groups. However, as explained above, the three criteria interplay: when the first two criteria do not suggest the immediate need for a wage increase, the “ability to pay” criteria has little weight.

Recommendation

The parties agreed to allow the Arbitrator to recommend a number constituting the City’s offer, the Association’s offer, or a number in between those offers. On these facts, there is no basis to conclude that the parties would have negotiated the last offer made by the Association, primarily due to its cost. In addition, there is no basis to conclude that the parties would have logically negotiated a base wage increase of one or two percent, without the Association agreeing to move to the new step plan. Under the terms of the stipulated issue, this Arbitrator cannot recommend that move to the new step plan (while acknowledging the EMPEA is willing to move it’s members at a significant price to the City). The Arbitrator is only allowed to recommend a wage percentage increase (see page one).

Summary

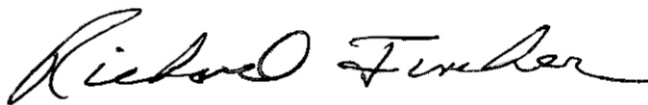
This Arbitrator recognizes the challenging role of law enforcement and appreciates the demanding task facing EMPEA members.

The best meet and confer agreements are negotiated directly by the parties. When used, the theory of interest arbitration is that disputants would logically adopt the negotiated results of other similarly situated parties. The Arbitrator's role is to determine what the parties should themselves have agreed to during negotiations.

Here, the recommendation derives from the three criteria agreed to by the parties. The key criteria is comparability with peer employers, which is a substitute for job value in the public sector. Based on the undisputed data, the City currently pays well within its peer group. In addition, there is no significant voluntary turnover of officers and no current impediment to recruiting new officers. In addition, there was no evidence that other peer city is addressing problems of salary compression or is granting significant (or any) base wage increases. While the Arbitrator finds the City has the current ability to pay by changing its budgetary priorities, this criteria is not determinative, given that the first two criteria are plainly in favor of the City.

Recommendation

Based on these facts, the proposed 3.3% one-time wage offer of the City is the more appropriate wage percentage for the third year wage reopener.

A handwritten signature in black ink, reading "Richard D. Fincher". The signature is fluid and cursive, with the first name "Richard" and last name "Fincher" clearly distinguishable.

Respectively submitted

Richard D. Fincher, Arbitrator,

June 20, 2016

§ 30.07 MEET AND CONFER.

(A) Findings and purpose.

- (1) The citizens of El Mirage have a fundamental interest in the development of harmonious and cooperative relations between city management, elected officials, administrators, and the employees of El Mirage;
- (2) Recognition by the city of the fundamental rights of public employees to organize and full acceptance of the principle and procedure of full communication between public employers and public employees, can alleviate various forms of strife and unrest;
- (3) The city, its employees and employee organization, have a basic obligation to the public to assure the orderly and continuous operation and functions of government;
- (4) Strikes, work stoppages, slowdowns, and other concerted efforts designed to disrupt city services, are contrary to the public good and are strictly prohibited. Participation in these efforts may be grounds for termination;
- (5) It is the purpose of this section to obligate the city management, city employees and their representatives, acting within the framework of law, to enter into discussions with affirmative willingness to resolve issues, grievances, and disputes relating to working conditions, wages, benefits, and hours of work. It is also the purpose of this section to promote harmonious employer-employee relations by providing a uniform basis for recognizing the right of public employees to join, or refrain from joining, an organization of their own choice. Also, it is their right to be represented by the organization in their dealings with the city in accordance with the provisions of this section. Additionally, this section provides that the results of agreements between the employer and its employees shall be drafted into written memorandums of understanding.

(B) Employee groups.

- (1) There shall be two groups within the city. It shall include:
 - (a) All police officers in classifications up to and including Lieutenants, dispatchers, records clerks;
 - (b) Firefighters up to the rank of Captain.
- (2) Authorized representation of an employee group shall be determined by the presentation of a petition (or membership applications) to the City Manager containing the signatures of at least 51% of the employees in the above designated groups. The petition shall designate the employee group and the employee organization designated to represent those employees. Upon verification of the signatures, the City Manager shall designate the named employee organization, as the official and exclusive employee organization for representation purposes provided for by this section. The designated employee organization shall have the right to bi-weekly or monthly dues deductions, if approved by the employees of the organization.

(C) Meeting and conferring.

(1) (a) An employee organization that has been verified by the City Manager, shall submit a proposal to the City Manager relating to wages, benefits, hours, safety regulations and other working conditions, by December 1, of each year.

(b) In the first year of this section, the employee organization shall submit its initial proposal by April 1.

(2) Upon receiving a proposal from a verified employee organization, the City Manager, shall submit a written response to the proposal to the employee organization within 30 days.

(3) Within ten days from receipt of the City Manager's response, representatives of the employee organization and the City Manager, as determined by the employee organization, shall begin "meeting and conferring" at mutually agreed upon locations and times, for the purpose of entering into a written memorandum of understanding relating to the proposal regarding working conditions, wages, benefits, and hours. Meetings shall be at least three hours in duration, unless mutually agreed otherwise. Meetings shall take place weekly until an agreement is reached, or impasse is declared.

(4) The City Manager, or his or her designated representative, and the representative of the employee organization, shall initial all areas of agreement. Those areas which were not agreed to shall be outlined as areas in dispute. If agreement has not been reached by March 10, a federal mediator will be requested. The City Manager, the employee representatives, and the federal mediator, will meet as often as necessary to reach an agreement.

(5) If an agreement still has not been reached by April 1, an arbitrator will be requested from the American Arbitration Association. Standard rules of the American Arbitration Association will be utilized in the section and use of the arbitration. However, selection of the arbitrator shall be limited to residents of Yavapai, Coconino, or Maricopa County.

(6) All issues not previously agreed to will be submitted to the arbitrator for resolution. On or before May 1, all areas of agreement, as well as those areas in dispute and still under consideration, and the recommendations of the arbitrator, shall be submitted to Mayor and Council for their consideration. The Mayor and Council may also take whatever actions they feel appropriate with regard to those areas in dispute. Final action by the Mayor and Council shall constitute the memorandum of understanding for the following fiscal year.

(Ord. O00-01-04, passed 1-27-2000)

**ADDENDUM
EL MIRAGE POLICE EMPLOYEES ASSOCIATION
MEMORANDUM OF UNDERSTANDING**

This Addendum to the El Mirage Police Employees Association (EMPEA) Memorandum of Understanding (MOU) dated June 17, 2011, is hereby made and entered into this 21st day of APRIL 2014, by and between the City of El Mirage, an Arizona municipal corporation (City), and the El Mirage Police Employees' Association (EMPEA).

RECITALS

WHEREAS, the City and the EMPEA entered into a Memorandum of Understanding (MOU) for Fiscal Year 2011-12 setting forth the terms and conditions under which the parties would operate regarding the employment of members of the EMPEA in the El Mirage Police Department; and,

WHEREAS, the City and the EMPEA entered into an Addendum dated May 22, 2012 to extend, among other things, the 2011-12 MOU, subject to certain changes, through the 2013-14 fiscal year; and,

WHEREAS, the City and the EMPEA entered into an Addendum dated February 19, 2013 to extend, among other things, the 2011-12 MOU, subject to certain changes through the 2013-14 fiscal year; and,

WHEREAS, the City and the EMPEA entered into an Addendum dated August 23, 2013 to extend, among other things, the 2011-12 MOU, subject to certain changes through the 2013-14 fiscal year; and,

WHEREAS, the City and the EMPEA, through their designated representatives, have met and conferred in good faith, pursuant to City of El Mirage Ordinance No. 000-01-04, to reach an agreement approving the continuation of the 2011-12 MOU for the fiscal year through 2016-17 subject to certain changes.

ADDENDUM

NOW, THEREFORE, the City and the EMPEA hereby agree the 2011-12 MOU as amended on May 22, 2012, February 19, 2013 and August 23, 2013, shall be and is hereby further amended as follows:

Section 1. Article 3 "Wages," Paragraph 1, is hereby amended to read as follows:

ARTICLE 3 – WAGES

1. During FY 15, members who have not reached the top of their respective pay ranges will receive a five (5%) percent base increase not to exceed the maximum of the applicable range as outlined on the attached 2015-2017 wage schedule referred to as Attachment "A", "B" and "C"

ADDENDUM
EL MIRAGE POLICE EMPLOYEES ASSOCIATION
MEMORANDUM OF UNDERSTANDING

and subject to a satisfactory or better performance review. Base increases for those hired or promoted after July 1, 2013 and before July 1, 2014 will become effective on the first pay date after their one year anniversary date in their current classification. Notwithstanding these provisions, members on Step 1 of the current plan will move to Step 1 of new plan (see attachment "A") and will not receive an additional increase during FY 15. Base increases for all other Association members hired or promoted before July 1, 2013 will become effective the first pay date in July 2014 (FY15).

2. On or about July 1, 2015 (FY16) and July 1, 2016 (FY17), Association members who have been employed for at least one (1) year, and have not reached the top step of their respective pay range will receive a one-time lump sum payment in the amount of three and thirty-three percent (3.33%) of their annualized regular rate of pay. On or about July 1, 2015 (FY16) and July 1, 2016 (FY17), members who have been employed for at least one (1) year, and have reached the top step of their respective pay range will receive a one-time lump sum payment in the amount of two percent (2.0%) of their annualized regular rate of pay.

Section 2. Article 6, "Uniform Allowance," is hereby amended to read as follows:

ARTICLE 6 – UNIFORM ALLOWANCE

- a. Sworn, full time Unit personnel will be entitled to receive reimbursement for authorized original issue and/or maintenance of uniforms up to \$1,100 per fiscal year, with no carryover to the next fiscal year. All reimbursement requests shall include paid receipts and will require approval of the Police Chief prior to submission to the Finance Department.
- b. Items approved for reimbursement include uniform apparel listed in the City of El Mirage Police Department Operations Orders such as pants, shirts, shoes, jackets, outer vest carriers, utility belt and accessories, flashlights, ball caps, etc. Firearms and ammunition are not reimbursable. Unit personnel may be reimbursed up to \$500 from the \$1,100, for purchase of court attire.
- c. Newly hired Unit personnel will be eligible for the allowance, on a prorated basis, based on their hire date with a minimum allowance of \$525, as outlined below:

Month Hired	Reimbursement Amount
July	\$1100
August	\$990
September	\$890
October	\$800
November	\$720
December	\$650
January	\$585
February to June	\$525

- d. If a unit member leaves employment with the City prior to September 30 in any given year, he/she shall reimburse the City for all reimbursements received since July 1 of that year.
- e. The Police Chief shall be the final authority with regard to eligible reimbursement items.

**ADDENDUM
EL MIRAGE POLICE EMPLOYEES ASSOCIATION
MEMORANDUM OF UNDERSTANDING**

Section 3. Article 26, "Term and Effect," paragraph A is hereby amended to read as follows:


ARTICLE 26 – TERM AND EFFECT

- A. This agreement shall be effective as of the 1st day of July, 2014 and shall remain in full force and effect until the 30th day of June 2017 or until such time as it is superseded by a new agreement or addendum between the parties, whichever occurs later.
- B. The parties further agree that during the second year of this agreement the EMPEA may submit a proposal to begin "meeting and conferring" regarding "Section 1. Article 3 "Wages" Paragraph 2 above. This is the only provision that may be reopened for "meeting and conferring" during the term of this agreement and will be limited to the topic of base wages during year three of this agreement. The proposal shall be submitted in accordance with, and the parties will follow the process as described in, §30.07(C) of the City Code.

IN WITNESS WHEREOF, the parties have set their hand this 21st day of APRIL 2014.

CITY OF ELMIRAGE

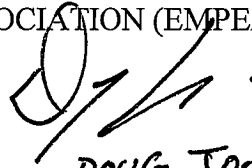
BY:


Spencer A. Ison


City Manager

EL MIRAGE POLICE EMPLOYEES
ASSOCIATION (EMPEA)

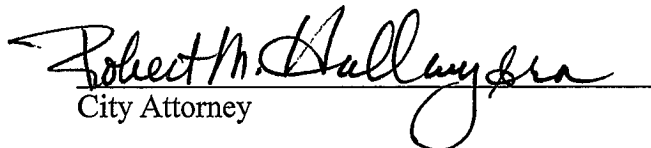
BY:


DOUG JONES

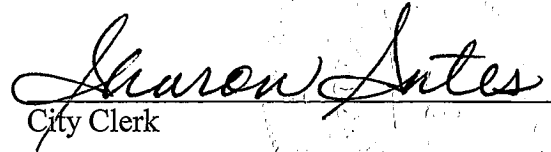
Association President


MICHAEL WARREN
Witness

APPROVED AS TO FORM:


City Attorney

ATTEST:


City Clerk

ATTACHMENT "A"

City of El Mirage Police MOU Pay Scale

FY 2015-2017

Effective July 1, 2014:

Any officer on Step 1 in the Current Step plan will be brought to the minimum of the New Plan (\$49,539.20) and will move through the New Plan in 5% increments until they reach the new max (\$74,308.80).
A new officer hired with less than four years of experience should be hired at the minimum of the New Plan, and will move through the New Plan in 5% increments until they reach the new max (\$74,308.80).

Step	Police Officer	Police Officer
Number	New Plan	New Plan
1	\$ 23.82	\$ 49,539.20
2	\$ 25.01	\$ 52,016.16
3	\$ 26.26	\$ 54,616.97
4	\$ 27.57	\$ 57,347.82
5	\$ 28.95	\$ 60,215.21
6	\$ 30.40	\$ 63,225.97
7	\$ 31.92	\$ 66,387.27
8	\$ 33.51	\$ 69,706.63
9	\$ 35.19	\$ 73,191.96
New Max 10	\$ 35.73	\$ 74,308.80

Effective July 1, 2014:

Any officer on Step 2 will continue to move through the current steps to the new max 11.
New officers hired with more than four years of experience should be placed on an appropriate Current Step.

Step	Police Officer	Police Officer
Number	Current Step	Current Step
1	\$ 22.39	\$ 46,569.00
2	\$ 23.51	\$ 48,900.80
3	\$ 24.68	\$ 51,334.40
4	\$ 25.92	\$ 53,913.60
5	\$ 27.21	\$ 56,596.80
6	\$ 28.57	\$ 59,425.60
7	\$ 30.00	\$ 62,400.00
8	\$ 31.50	\$ 65,520.00
9	\$ 33.08	\$ 68,806.40
10	\$ 34.73	\$ 72,238.40
New Max 11	\$ 35.73	\$ 74,308.80

ATTACHMENT "B"

City of El Mirage Police MOU Pay Scale FY 2015-2017

Effective July 1, 2014:

A new sergeant hired with less than four years of experience should be hired at the minimum of the New Plan (\$64,824.80), and will move through the New Plan in 5% increments until they reach the new max (\$97,237.20).

Step	Police Sergeant	
Number	Current Step	New Plan
1	\$ 31.17	\$ 64,824.80
2	\$ 32.72	\$ 68,066.04
3	\$ 34.36	\$ 71,469.34
4	\$ 36.08	\$ 75,042.81
5	\$ 37.88	\$ 78,794.95
6	\$ 39.78	\$ 82,734.70
7	\$ 41.77	\$ 86,871.43
8	\$ 43.85	\$ 91,215.00
9	\$ 46.05	\$ 95,775.75
New Max	\$ 46.75	\$ 97,237.20

Effective July 1, 2014:

Any Sergeant on Step 1 will continue to move through the current steps to the new max 10.

New sergeants hired with more than four years of experience should be placed on an appropriate Current Step.

Step	Police Sergeant	
Number	Current Step	Current Step
1	\$ 30.64	\$ 63,731.00
2	\$ 32.17	\$ 66,913.60
3	\$ 33.78	\$ 70,262.40
4	\$ 35.47	\$ 73,777.60
5	\$ 37.24	\$ 77,459.20
6	\$ 39.11	\$ 81,348.80
7	\$ 41.06	\$ 85,405.64
8	\$ 43.11	\$ 89,668.80
9	\$ 45.27	\$ 94,152.24
New Max	\$ 46.75	\$ 97,237.20

**City of El Mirage
Police MOU Pay Scale
FY 2015-2017**

	Regular	Regular
	Hourly Rate	Annual
Police Records Clerk		
Minimum	15.28	\$31,799
Midpoint	19.11	\$39,749
Maximum	22.93	\$47,699
Police Recruit	18.50	\$38,480